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IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

OCTOBER TERM, 1965

No. 227

JAMES R. BULLOCK,
Petitioner

vs.

COMMONWEALTH OF VIRGINIA,
Defendant

Petition for Re-hearing of Order denying Petition for Writ of Certiorari

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THE RELIANCE PRESS OF NORFOLK, VA., INC.

IN THE

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vs.

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Defendant

MOTION

Petitioner, James R. Bullock, respectfully moves this Honorable Court for leave to file the annexed petition for re-hearing of the order of this Court denying the petition for a writ of certiorari in this case, entered on November 22nd, 1965. Re-hearing is sought at this time by virtue of the fact, as is more fully set forth in the annexed petition, that the decision of this Court on June 22nd, 1964, in *Escobedo* v. *Illinois*, 378 U.S. 478, had not been established at the time that either of the two cases, which were the subject matter for the writ of certiorari, were filed in the Supreme Court of Appeals of the State of Virginia; and accordingly, provisions for that rule were not available to the petitioner at that time.

HERBERT S. REID, JR.
Counsel for Petitioner

December 14th, 1965

Petitioner, James R. Bullock, respectfully prays that this Honorable Court grant re-hearing of its Order of November 22, 1965, denying his petition for a writ of certiorari previously filed herein, and that a writ of certiorari be issued to review the judgment of the Supreme Court of Appeals of the State of Virginia in the above entitled cause, as prayed for in the Petition for a Writ of Certiorari filed herein.

REASONS FOR GRANTING RE-HEARING

1. There was not sufficient evidence presented by the Commonwealth of Virginia to establish the corpus delicti and to support a conviction of the petitioner, which in effect was tantamount to a denial of due process of law, as prescribed by the Fifth Amendment to the Constitution of the United States.

The evidence as to the corpus delicti in this situation is very slight, to say the least. The only evidence which could be considered as going directly to it would be the testimony of Detective E. W. White, wherein he stated that the defendant told him that he was the owner and operator of Heath Auto Sales, that he signed the note in question after the other signatures were already on it, negotiated it at the bank and received the proceeds therefrom, knowing at the time that the note was phony, (RT 60-61).

The presently accepted definition of the term corpus delicti was recently reiterated in *Lucas* vs. *Commonwealth*, 201 Va. 599, citing with approval the definition set forth in 5 *Mich. Jur.*, Criminal Procedure, Section 54, pp. 400, 401, as follows:

"The corpus delicti is the fact that the crime charged has been actually perpetrated. It is the body or substance of the crime. The corpus delicti consists not merely of an objective crime, but of the defendant's agency in the crime."

Stated in another form, it is said to consist of the proof that the act itself was done and that it was done by the person charged, and by none other—in other words, proof of the corpus delicti and of the identity of the prisoner. 20 *Am. Jur.*, Eivdence, Section 151, p. 155.

If we concede, for the purpose of argument, that the first part of the definition has been established; the agency of the defendant in the same is far from established. It is a long established rule that the extra judicial statement of the accused is not, standing alone, sufficient to establish the corpus delicti, *Cleek* v. *Commonwealth,* 165 Va. 697, 181 S.E. 359. However, it is also well established that the corpus delicti may be proved by circumstantial evidence which produces full assurance of moral certainty on the subject. *Cochran* v. *Commonwealth,* 122 Va. 801, 94 S.E. 329. The question of what circumstantial evidence is required, or the degree of proof necessary to be established by circumstantial evidence, is considered in *Campbell* v. *Commonwealth,* 194 Va. 825, 75 S.E. 2nd 468, wherein the court set forth:

"***a confession is competent evidence tending to prove the corpus delicti, and all that is required of the Commonwealth in such cases is that there be such substantial corroborative circumstances as will, when taken in connection with the confession, establish the corpus delicti beyond reasonable doubt. *Cochran* v. *Commonwealth,* 122 Va. 801, 817, 94 S.E. 329; *Cleek* v. *Commonwealth, supra,* 165 Va. at page 699, 181 S.E. at page 360; *State* v. *Blackwell,* 102 W. Va. 421, 135 S.E. 393, 394."

If we may concede, again for the purpose of argument, that the testimony of Detective White amounts to a "confession" of the accused, there still remain a number of facts which would have to be established in order to corroborate the "confession". With this in mind the first uncorroborated fact, or element, is whether the accused received the money. The Commonwealth's witness, John B. Gibson, Jr., who was an assistant cashier at the bank, stated that he handled the transaction, insofar as it concerned the bank (RT 23, 24, 25). However, he could not say who he dealt with regarding the note (RT 25), and the testimony of this witness, uncontradicted, is that the proceeds of the note were credited to a checking account in the name of Heath Auto Sales Company, Incorporated (RT 29). At no place in the testimony is there on scintilla of evidence to corroborate the testimony of Officer White, that the defendant received the proceeds of the note, or even that the defendant negotiated the note on behalf of the Corporation. With reference to any inference that might be drawn, or concluded, from the evidence that the defendant endorsed the paper, it is well to bear in mind that as a prerequisite of any loan made in the name of Heath Auto Sales Company, Incorporated, someone representing the dealer had to endorse the notes, (RT 34-37), and this was true in every instance, including those transactions that were brought to the bank by persons other than the defendant, and even in those that were picked up by the representative of the bank.

In viewing the facts of the case, and the law applicable to the subject, it is submitted that the corpus delicti was not proved beyond a reasonable doubt by the Commonwealth, and the action of the Supreme Court of Appeals of Virginia in its failure to so rule, constituted a denial to the

petitioner of the protection of the provisions of the Fifth Amendment to the Constitution of the United States.

2. Does the refusal on the part of police officers to allow the accused to talk and consult with his attorney, when he was being illegally held for the purpose of interrogation, during which period of time the supposed statements were made, which were the basis of the evidence used to support his conviction, violate the protective provisions of the Sixth Amendment to the Constitution of the United States, wherein he was denied the right of the assistance of counsel?

Inasmuch as both trials of the petitioner were related to the petition for certiorari previously filed herein, he begs leave of Court, insofar as this question is concerned, to make reference not only to Records Number 5938 and 5876, that being the designations of this matter in the Supreme Court of Appeals of Virginia, but also to the certified copy of the transcript of the testimony in the first trial and proceedings, and constituting a part of the record.

For the sake of clarification, it is here the contention of the petitioner that the rule as prescribed and laid down by this Court in Escobedo v. Illinois, 378 U.S. 478, decided June 22, 1964, was not available at the time that both of these matters were heard in the trial court.

The facts which are the basis of this question, which is here raised for the first time, for the reason hereinabove set forth, are as follows.

Petitioner was met by E. W. White and L. R. Rawls, two detectives of the Norfolk Police Department on the 6th day of August, 1963, at the Berkley Branch of the Seaboard Citizens National Bank, Norfolk, Virginia approximately 11:00 o'clock A.M. At this time a question had been

raised as to the validity of a certain chattel deed of trust and note, the note being the subject matter of the two cases complained of in the petition for a writ of certiorari previously filed herein, purportedly signed by Daniel J. Bigelli and Frances Bigelli, and endorsed by James R. Bullock, however, both of the Bigellis, who were present at this time, denied that the signatures were theirs.

At approximately twelve noon the accused was taken to police headquarters and detained by the detectives for some four hours. During this time it was admitted by Detective White that petitioner was there for the purpose of interrogation as is shown by the following* (RT 61-64):

"Q. Was Mr. Bullock free to leave any time he wanted to?

A. Up until a certain point, yes, sir.

Q. What time was this point reached, Mr. White?

A. Until the warrant was obtained for him, around three o'clock.

Q. Around three o'clock. I believe you stated previously it was around four.

A. I said he was put on the police docket at around four. The warrant was obtained for him approximately 3:00 p.m. After that, he was processed, photographed, fingerprints taken, and then was carried to the First Precinct where he was placed on the docket.

Q. Officer White, let me ask you this: At the time you left the bank, you had sufficient evidence—you had sufficient knowledge of this situation on which you could have obtained, as you did subsequently, a warrant upon information, did you not?

*The reference here, and throughout the remainder of this question, are to the transcript of the first trial.

A. I knew nothing about it until I got to the bank.

Q. I see. I'm talking about at the time you left the bank. You had sufficient knowledge at that time so that you could have obtained a warrant on information; is that not correct, sir?

A. I wouldn't say I had for sure, no.

Q. Well, what was your point in questioning, or wouldn't it be better to say, interrogating Mr. Bullock?

A. To determine if he knew who signed the names of Mr. and Mrs. Bigelli who had denied signing them, and to find out anything I could concerning it.

Q. In other words, your purpose in him being over there was to interrogate him, get admissions from him, as to his guilt or the guilt of others; is that correct sir?

A. It was to find out what transpired and who had negotiated this thing, this deal.

Q. Mr. White, you had people who said they didn't sign this paper?

A. Yes.

Q. Mr. Bullock's signature appeared on it?

A. Yes.

Q. Mr. Bullock appeared at the bank and said he would pay off the note because he was the endorser on it?

A. Right.

Q. Didn't you have enough information there to procure a warrant on information?

A. I wouldn't have thought so.

Q. Mr. White, the truth of the matter is that you didn't want to get a warrant because at that time he would have to be admitted to bail and that you wanted to talk to him, to interrogate him?

MR. WHITEHURST: Your Honor, I do not know what all these suppositions are that he's saying his man was guilty there at the bank and he shouldn't question him any more.

MR. REID: I am not saying any such thing.

THE COURT: Go ahead and ask the question.

THE WITNESS: Would you ask that again?

BY MR. REID:

Q. Wasn't it your intention and your purpose for not getting a warrant at that time—wasn't it for the purpose of interrogating the accused because you knew, if you got a warrant, that you knew he would have to be admitted to bail?

A. I was trying to determine if he was the guilty person before getting the warrant.

During the course of cross-examination Detective White admitted that he was aware that Attorney Herbert S. Reid, Jr. called and requested that he be allowed to speak with his client. (RT 66, 67). It is well to note that while the detective contended that petitioner was not in custody, Detective White's testimony was all together different (RT 69):

Q. You were with him—either you or Detective Rawls were with him the entire time, were you not, sir?

A. Yes. He was down the hall to the water fountain a time or two, but he was not out of our sight, I'll say that.

The other detective, L. R. Rawls, on this same subject, testified as follows (RT 134, 135):

Q. Now, what time in the—did you lock Mr. Bullock in a small room while he was at the Police Headquarters?

A. No, he was in the back room; no, sir.

Q. You don't recall locking him in a small room?

A. No, sir.

Q. Is there a small room up there that has a lock on it?

A. No, sir, all the locks are on the cells.

Q. Pardon?

A. All the locked places would be the cells.

Q. Is there any place in this particular portion of Police Headquarters where a prisoner could be secured for a period of time rather than taking him to jail?

A. Our cells, yes, sir.

Q. You have cells, there?

A. Yes, sir, we have cells on the second floor.

Q. Is this on the second floor where you are?

A. Yes, sir.

Q. Are they small cells?

A. That's right, yes, sir, individual cells.

Q. I see. And you don't recall Mr. Bullock being locked in one of these?

A. No, sir, not in a cell.

Q. Was he locked in a room of any kind?

A. He was in a back room, yes, sir, that has an outside lock to it.

Q. Was it locked?

A. Yes, sir.

The testimony of Detective L. R. Rawls goes more directly to the point of denying the petitioner the right to assistance of counsel, as appears from the following, (RT 130-133):

Q. Did there come a time on, I believe, two occasions that someone called and requested that they be permitted to speak to Mr. Bullock, particularly myself?

A. One time that I know of that they insisted to speak to him, yes.

Q. Pardon?

A. One time that I know myself that they insisted to speak to him.

Q. And that was me?

A. Yes, sir.

Q. Do you recall what you told me?

A. Yes, sir.

Q. What was that?

A. I didn't know you, I didn't know if he was your client; that he was being interrogated in the back room on the second floor.

Q. This is what you told me?

A. Yes, sir.

Q. Did you not tell me, Officer Rawls—see if this refreshes your memory—you said, "Herbert, you cannot talk to him because—"

(Soliloquy between Court and counsel.)

BY MR. REID:

Q. I believe you then stated that you would not allow me to talk to the accused?

A. That's correct.

RT 137, 138:

Q. If you recall, Officer Rawls, did Mr. Bullock tell you that he wanted to talk to me; that "I want to call Herb," or words to that effect?

A. I know he did say he wanted to talk to Mr. Reid, yes, sir.

Q. And was he given the privilege of talking to me?

A. He used the phone twice, sir.

Q. He used the phone twice, Mr. Rawls?

A. Yes, sir, twice while he was there he talked to someone.

Q. Was this prior or subsequent to the time that he asked if he could talk to me?

A. I could not tell you.

* * * *

On June 22, 1964, this Court held in *Escobedo* v. *Illinois*, 378 U.S. 478, 12 L. Ed. 2nd 977, 84 S. Ct. 1758, in a factual situation which is directly in point with the question herein raised:

> "We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime, but had begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied "the assistance of counsel" in violation of the Sixth Amendment to the Constitution as "made obligatory upon the States by the Fourteenth Amendment", *Gideon* v. *Wainwright*, 372 U.S. 342, and that no statement elicited by the police during the interrogation may be used against him at a criminal trial."

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that re-hearing be granted and that, upon such rehearing, a writ of certiorari issue to the Supreme Court of Appeals of Virginia.

Respectfully submitted,

HERBERT S. REID, JR.

Counsel for Petitioner

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for re-hearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

HERBERT S. REID, JR.

Counsel for Petitioner